

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 533 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BHODUBHAI ALIAS MATHURBHAI RAMSING BARIYA

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 24/02/98

ORAL JUDGEMENT (Per: B.C.Patel,J)

Having gone through the judgment delivered by the learned trial Judge and record and proceedings, it appears that no apparent error is committed even with regard to appreciation of evidence. The learned Public

Prosecutor could not point out any material indicating that the learned Judge has seriously erred in appreciating the evidence so as to say that the benefit of doubt which is given is not rightly given. It is required to be noted that there is discrepancy between exts.12 and 13 about existence of an additional person at the place where incident is alleged to have taken place. Neighbours have not come forward to give evidence in favour of the prosecution. Incident took place between 3 p.m. and 4 p.m. House of the deceased is situated in a locality where his relatives are staying. There were people moving at the time of occurrence near the place of incident. Evidence reveals that at the house of deceased there were other persons. Considering the picture, possibility of committing crime by others cannot be ruled out. Learned Judge, in para 35, has come to the conclusion that there is possibility that at the time of incident, deceased and accused may be there. However, for that purpose, one Balvantbhai is not examined by the prosecution. Therefore, in absence of evidence of Balvantbhai, it is difficult to say positively about the presence of the accused.

2. It is no doubt true that it is a case of unnatural death. It is further case of prosecution that as neck was pressed, deceased could not be breathed. It also appears that deceased was under the influence of liquor. Medical Officer-P.W.No.6, post-mortem report ext.7 and report of FSL ext.11 clearly point out that the deceased himself consumed liquor in huge quantity. The Medical Officer has deposed that on hands and knees of both the legs, there was mud. If, as per the prosecution case, the incident took place when the deceased was on a cot in his house, then in that case, it is not possible to have the mud as it is noticed by Medical Officer. Learned Judge has observed that it is more probable that after consuming liquor, he must have lost balance and he might have fallen at a muddy place facing earth as a result of which, he could not have breathed and that could be the cause of death. There is not a single witness to the incident, as observed by the learned trial Judge. In view of this, it is difficult to interfere with the order passed by the learned trial Judge.

3. We are not discussing the evidence in detail in view of the observations made by the Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR

93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

4. In view of the what is stated above, we do not find it necessary to interfere with the judgment and order passed by the learned Additional Sessions Judge, Panchmahals Camp at Dahod in Sessions Case No.180 of 1996 on 22-1-1996. Hence, appeal stands dismissed.
